

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KIRK VON FELHABER,

Defendant.

CR 13-12-BLG-DWM

ORDER

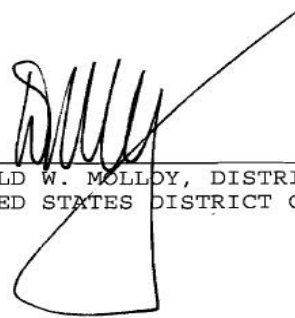
United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation in this matter on August 22, 2013. Neither party objected and therefore they are not entitled to de novo review of the record. 28 U.S.C. § 636(b)(1); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Ostby recommended this Court accept Kirk Von Felhaber's guilty plea after Felhaber appeared before her pursuant to Federal Rule of Criminal Procedure 11, and entered his plea of guilty to the Count contained in the Superseding Information, which charges the crime of Conspiracy to Possess with Intent to Distribute Marijuana, in violation of 21 U.S.C. § 846.

I find no clear error in Judge Ostby's Findings and Recommendation (doc. 122), and I adopt them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS HEREBY ORDERED that Kirk Von Felhaber's motion to change plea (doc. 94) is GRANTED and his plea of guilty is accepted and he is now adjudged guilty of the crime of Conspiracy to Possess with Intent to Distribute Marijuana, in violation of 21 U.S.C. § 846. Trial in this matter is VACATED.

DATED this 3<sup>rd</sup> day of September, 2013.



DONALD W. MOLLOY, DISTRICT JUDGE  
UNITED STATES DISTRICT COURT